(1)

Supreme Court, U.S.
FILED

001835 MAY - 3 2001

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

ADOUDA ADJIRI,
Petitioner,

v.

EMORY UNIVERSITY,
Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

DR. Adouda ADJIRI, *Pro Se*
1231 Clairmont Road # 40-D
Decatur, GA 30030
Phone: (404) 235 0647

30 pp

QUESTIONS PRESENTED

This is a civil case of employment discrimination that involved a confession from the defending party but the case never went to trial nor it had ever been resolved otherwise in favor of the complaining party.

Petitioner's questions to the Supreme Court concern summary judgement described under Fed.R.Civ.P. 56 and are as follows:

1. Should the defendant, who had confessed being at fault, be allowed to file for summary judgement?

2. Can the lower court enter summary judgement against the plaintiff when the defendant had actually confessed under oath being at fault?

3. Should summary judgement, as a procedural step, be eliminated in employment discrimination cases?

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Emory University
Dr. Garth E. Austin
Dr. Weigo Zhao
Mrs. Jipu Lu

In an order issued on May 7, 1997, the Honorable Magistrate Judge John E. Dougherty dismissed individuals Dr. Garth E. Austin [9], Dr. Weigo Zhao [5] and Mrs. Jipu Lu [9] who were named defendants in the original complaint filed on November 18, 1996.

TABLE OF CONTENTS

OPINIONS BELOW.....1

JURISDICTION.....1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....2

1. RULING ON APPEAL.....3

2. RULES INVOLVED.....4

STATEMENT OF THE CASE.....7

REASONS FOR GRANTING THE WRIT.....13

CONCLUSION.....16

INDEX TO APPENDICES

APPENDIX A: Decision of the 11th Circuit U.S. Court of Appeals

APPENDIX B: Decision of the U.S. District Court for the Northern District of Georgia

APPENDIX C: Decision of the 11th Circuit U.S. Court of Appeals Denying Rehearing

APPENDIX D: Post-Hearing Decision of the Georgia Department of Labor

TABLE OF AUTHORITIES CITED

CASES **PAGE**

Daniels v. GNB. Inc.,
629 So. 2d 595 (Miss. 1993).....6

Dumbadze v. *Agent of Canadian Car & Foundry Co.*,
38 NYS 2d 991. 4

First Trust & deposit Co., v. *dent.*,
34 NYS 2d 282, 263, App. Div. 1058.....3

Gurge v. *Agency of Canadian Car & Foundry*
Dumbadze's estate,
47 NYS 2d 315, 267 App.Div. 878.....4

National Surety Co. v. *First National Bank of Indiana*,
106 F. Supp. 302.....5

NY—Brescie Const. Co. v. *Walard Const. Co.*,
246 NYS 862, 238 App. Div. 360 6

STATUTES AND RULES

28 U.S.C. § 1254 (1).....1
28 U.S.C. § 2101 (e).....2
29 C.F.R. § 1604. 11 (c).....9
42 U.S.C. § 2000e.....4
Fed. R. Civ. P. 56.....2, 4, 5
Title VII of the Civil Rights Act of 1964.....4, 15

OTHER

OCGA § 34-8-157 (b)(3).....App. 6, 7, 8
OCGA § 34-8-194 (2)(A).....App. 6, 7, 8
OCGA § 34-8-195 (a)(3).....App. 8

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at **Appendix A** to the petition and is **unpublished**.

The opinion of the United States District Court appears at **Appendix B** to the petition and is **unpublished**.

JURISDICTION

The date on which the United States Court of Appeals decided my case was March 8, 2001:

A timely petition for **panel rehearing** was denied by the 11th Circuit United States Court of Appeals on **March 8, 2001**, and a copy of the order denying rehearing appears at **Appendix C**.

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pursuant to Supreme Court Rule 11, petitioner is hereby filing a writ of certiorari because this case raises questions of imperative importance requiring immediate determination in this Court. 28 U.S.C. 2101(e).

According to Fed.R.Civ.P. 56, the District Court allowed respondent to file for summary judgement in spite of respondent's confession. [49].

On July 27, 1998, petitioner filed her answers in opposition to respondent's motion for summary judgement. [49-1]. But on January 25, 1999, the Honorable District Magistrate Judge John E. Dougherty ordered, reported and recommended that respondent's motion for summary judgement be granted. [55].

On March 23, 1999, the Honorable District Judge Richard W. Story granted respondent's motion for summary judgement. [55-1]. And in a judgement issued on March 24, 1999, the District Court dismissed petitioner's case. [59].

On July 19, 1999, the Honorable District Judge Richard W. Story denied petitioner's motion for reconsideration. [59 -1].

1. RULING ON APPEAL

The Appeal Court sanctioned the departure from the accepted course of judicial proceedings by the District Court, as to call for an exercise of this Court's supervisory power.

On February 2, 2001, the 11th Circuit Court of Appeals affirmed the District Court's decision granting respondent's motion for summary judgement.

The Appeal Court stated that petitioner failed to make *prima facie* showing of hostile work environment sexual harassment, sex discrimination and retaliation. The Appeal Court also stated that petitioner did not exhaust her race and national origin claims. On a motion by defendant for summary judgement, plaintiff is not required to establish his defense to the motion by a preponderance of the proof. *First Trust & deposit Co., v. Dent.*, 34 NYS 2d 282, 263, App. Div. 1058.

In a timely filed petition for panel rehearing, petitioner showed the *prima facie* of her case as she met all the requirements, for her race and national origin claims, hostile work environment sexual harassment, sex discrimination and retaliation. Petitioner also stated the legal arguments, which make employer Emory University liable in sexual harassment by supervisor and co-workers.

Even though petitioner had clearly shown the *prima facie* of her case evoked by the court, still that did not change the Appeal Court's opinion as it denied petitioner a chance for rehearing.

Moreover, the Appeal Court, similarly to the District

Court, never challenged respondent to show that the discharge of petitioner on July 22, 1996 was for non-discriminatory reasons. If respondent is allowed to file for summary judgement in spite of its confession, then the court had to consider that on a motion by the defendant for summary judgement, the burden is on defendant to establish his defense by proof of the facts pleaded. *Dumbadze v. Agent of Canadian Car & Foundry Co.*, 38 NYS 2d 991; Aff'd. *Gurge v. Agency of Canadian Car & Foundry Dumbadze's estate*, 47 NYS 2d 315, 267 App. Div. 878.

Even if it did, respondent could never meet its burden because it cancelled the grounds of the discharge by making contradictory statements and finally confessed under oath but without reinstating petitioner to her former position or clearing her records, intending thus to cause permanent damage to petitioner's career.

2. RULES INVOLVED

On November 18, 1996, petitioner brought action, under Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e, against her former employer respondent Emory University. At earlier stages of this case, all respondents named in this lawsuit filed motions to dismiss. The District Court granted motions to dismiss individuals Zhao [5] and Austin & Lu [9] but denied Emory University's motion to dismiss. [6].

Respondent refused to settle the case and rejected a future possibility for settlement, as filed in its Preliminary Planning Report and Scheduling Order. [27]. Following Fed.R.Civ.P. 56, respondent filed a

motion for summary judgement, which was granted by the District Court. [55-1]. By entering summary judgement against petitioner, the District Court dismissed her case. [59].

In order to answer the questions raised in this petition, it is imperative to review the purpose that summary judgement intends to serve as currently defined under Fed.R.Civ.P. 56.

When the District Court dismissed petitioner's case, it did so after summary judgement but not before. This makes summary judgment appear as a second round of screening. In that situation, the District Court should have given petitioner equal chance during pre-trial discovery period anterior to summary judgement. However, this was not the case because when both petitioner and respondent filed motions to compel, the District Court granted respondent's motion to compel [36-1] but denied petitioner's motion to compel. [40-1].

In 208 pages plus 38 pages of literature filed in its motion for summary judgement, respondent diverged the attention of the court from the main issue of this case which is the wrongful discharge of petitioner and for which respondent had already confessed being at fault.

Respondent's arguments to the court were based on statements and affidavits of the individuals who abused and discriminated against petitioner, and also on selected partial evidence filed by petitioner, which was used against her. The court may not decide issues of fact on a motion for summary judgement. *National Surety Co. v. First National Bank of Indiana*, 106 F. Supp. 302. And the court should not make findings of fact and conclusions of law on granting a motion for

summary judgement. *NY—Brescie Const. Co. v. Walard Const. Co.*, 246 NYS 862, 238 App. Div. 360.

Summary judgement motion reduced then the case to a matter of "he said, she said" without petitioner having a chance to cross-examine respondent's witnesses. That would become a subject of trial from which petitioner was deprived as the District Court entered summary judgement against her. Summary judgement motion is never to be used as a substitute for trial. *Daniels v. GNB. Inc.*, 629 So. 2d 595 (Miss. 1993).

It is noteworthy to mention here that when petitioner was called for a deposition, respondent's counsel tried to make her say that she abandoned her job. This is an example of several similar situations. Unsatisfied with her answers, the counsel compelled petitioner to a second deposition, in a motion granted by the District Court. [36 -1].

STATEMENT OF THE CASE

Petitioner is a white female, Berber-speaking citizen of Algeria. Petitioner graduated in 1993 from the University of Paris XI, France with a Ph.D. degree in Physiology and Genetics of Microorganisms.

In November 1993, respondent Emory University hired petitioner as a post-doctoral fellow. Petitioner worked for two years in the Biology Department under the supervision of Dr. Gray F. Crouse, a Biology Professor at Emory University. In January 1996, petitioner transferred to work in the Pathology Department under the supervision of Dr. Garth E. Austin, a Chief of Clinical Pathology at the Veterans Affairs (VA) Hospital and an Associate Professor of Pathology at Emory University. Dr. Crouse's laboratory was located on Emory campus whereas Dr. Austin's laboratory was located at the Decatur VA Hospital.

Neither supervisor Crouse, nor any male co-worker harassed petitioner in the Biology Department. Therefore, petitioner never complained while in the Biology Department.

However, in the Pathology Department, petitioner was insulted and harassed by her co-worker Dr. Weigo Zhao, a Chinese male and an Emory Lead Research Specialist. Soon after she started working in Austin's lab, petitioner noticed that radiation safety regulations were not respected. Petitioner shared her concerns with her co-worker Zhao who not only refused to cooperate, but insulted petitioner. When the VA Radiation Safety Office intervened and assisted petitioner, Zhao became more aggressive and put restrictions on petitioner so that she won't freely use

the material in the lab such as the printer and the chemical hood. Later on, petitioner found that radiation safety was a chronic problem in Austin's lab. Mr. Roland Phillips, of the VA Radiation Safety Office, shared with petitioner different documents including memorandums he had been filing regarding the handling of radioactive material in Austin's lab. (Pet. App. 4).

Moreover, in Pathology Department, supervisor Austin sexually harassed and intimidated petitioner. Austin started winking at petitioner and making remarks about her hair and clothing and once, while she was working late in the lab, he took her for dinner. In March 1996, when she attended with Austin a business meeting in Taos, New Mexico, petitioner found that Austin did not make a reservation for a separate room for her. (Pet. App. 6). Austin compelled petitioner to share with him his one-bedroom hotel suite for the entire period of the meeting that lasted five days but petitioner did not have a sexual relationship with Austin and did not allow him to touch her.

Austin lacked respect not only to petitioner as his female employee but to his own wife Ellen as well. Ellen went on a weekend ski-vacation to Taos and witnessed her husband's hotel arrangement. Ellen does not work for her husband and did not attend the meeting and left, as planned by her husband who made the flight reservation and scheduled her trip back to Atlanta for March 18, 1996. (Pet. App. 7).

Austin booked the flights to Colorado Springs in the state of Colorado, which is not the closest airport to Taos where our business meeting was being held. (Pet. App. 8). Moreover, we flew on March 15, 1996 for a

meeting which opening cession was scheduled for the evening of March 17, 1996 and lectures officially began early March 18, 1996.

At her return from Taos, petitioner asked Austin to stop harassing her but her work conditions grew only to become unreasonably abusive. Petitioner decided to complain and filed a report with the VA Police Department on April 12, 1996. (Pet. App. 9). Since she was an Emory but not a VA employee, petitioner had to address her further complaints to the appropriate offices at Emory. Petitioner complained first to the Emory Employment Relations Office then to the Equal Employment Opportunity Office but no corrective action was taken. (Pet. App. 10-11). Petitioner's complaints were activities all protected under 29 C.F.R. § 1064, 11(c).

Because respondent did not take any remedial action to stop their harassment, Zhao continued preventing petitioner from using the printer again, the UV light, and biological solutions. Austin on his side used Mrs. Jipu Lu, a Chinese female co-worker and a volunteer in the lab. On July 10, 1996, Austin asked petitioner to make a copy of a paper but Lu assaulted petitioner and prevented her from making a copy of that paper. Petitioner maintains that Lu did not act alone but was used by Austin mainly when Zhao was away from the lab. Petitioner never complained before about Lu until after this unique incident involving her and for the first time. (Pet. App. 16 and 22).

On July 22, 1996, petitioner, desperate for help, took an appointment with Mrs. Carol McMurtray, a Business Manager in the Pathology Department at Emory, who surprised petitioner with the discharge that terminated her employment. Prior to this,

petitioner tried to get the attention of the President of Emory, Dr. William Chace who responded five months later expressing his sympathy for petitioner's unfortunate situation. (Pet. App. 14).

Mrs. McMurtray issued two different separation notices. (Pet. App. 19-20). The first one stated quote:

> "Failure to interact appropriately with your co-workers in the laboratory, insubordination and unwillingness to communicate with your supervisor, and job abandonment."

In the second separation notice, Mrs. McMurtray did not state job abandonment but stated quote:

> "Failure to interact appropriately with your co-workers in the laboratory, insubordination and unwillingness to communicate with your supervisor."

Mrs. Sharon Carter, a Benefits Specialist at Emory Human Resources disclosed, to the Georgia Department of Labor, the exact dates of petitioner's employment but stated only job abandonment as a reason for separation. (Pet. App. 21).

On October 28, 1996, when the Georgia Department of Labor called for a hearing, Mrs. Carter, as respondent's representative, confessed under oath that Emory University was at fault in the discharge of petitioner on July 22, 1996.

The District Court denied petitioner's request for an order to access the sealed transcript of the hearing [20-1]. The post-hearing statement (Pet. App. 29)

released by the hearing officer Mr. Peter J. Katsegianes is quoted below, where petitioner is the claimant and Emory University the employer:

> "Considering the employer's sworn affirmation that claimant was not at fault in her separation, as well as claimant's denial of fault and the absence of any admissions against her best interest, it is concluded that the employer has not carried its required burden to demonstrate that the claimant was discharged under disqualifying conditions". (See Appendix. D).

After filing this lawsuit, the local Immigration and Naturalization Service (INS) targeted petitioner. On March 25, 1998, the INS seized petitioner's passport along with the document (Form I-94) that shows her legal entry to the United States. The local INS also took petitioner's picture and fingerprints on a red chart that is reserved only for criminals who have committed a crime. Petitioner committed no crime but complaining about practices made unlawful by the constitution of her host country. At this point, petitioner does not see or know how to clear those records, accusing her of a non-existing crime, and failed so far in her attempts to get back her passport and Form I-94.

In three separate hearings that followed, the local INS put enormous pressure on petitioner to file for political asylum for which she is never qualified. It is needless to remind here that making false statements under oath or filing a frivolous application is punishable by law. In this particular case, deportation would be the appropriate punishment. The local INS is still working to that end and that would contradict an

earlier decision by the Department of Justice in which it waived petitioner from going back to her home country as required by Immigration Rule 212(E). (Copy filed at the deposition).

Petitioner holds respondent Emory University liable for all INS actions taken against her because these actions are not only unconstitutional but also contradictory.

The combined actions by respondent Emory University and the local INS caused petitioner great suffering and as a result, she is suffocating like a python's prey.

REASONS FOR GRANTING THE WRIT

It is of extreme importance that the Supreme Court grants this writ because of the following reasons:

1. It is known in criminal cases that when the suspect confesses his or her crime, the case moves forward but is not dismissed and the criminal court does not challenge the prosecution to provide extra evidence as if there were not a confession of the crime. The same logical reasoning must then apply to civil cases in which the respondent confessed its wrong-doing. Since respondent Emory University confessed being at fault in the discharge of petitioner but denied any possibility for settlement, this case must move to a jury trial. Moreover, once a court has found a cause for action, the case must move toward a resolution and dismissal must never become its fate.

2. The District Court allowed summary judgement and overlooked therefore respondent's confession. If summary judgement is considered a second round of screening, it is still unfair because it prolongs suffering of the victim, considering the fact that the decision on the merits of the case was reached earlier by the court when it denied respondent's motions to dismiss.

This case clearly showed that the purpose of summary judgement is to achieve dismissal regard-less of any consideration. For this, the District Court gave respondent advantage and granted its motion to compel while it denied the same right to petitioner. By the end, summary judgment turned to be only a mean by which justice is delayed in order to deny it. Consequently, eliminating summary judgement be-comes the inevitable conclusion, knowing that the

Court of Appeals endorsed the District Court's rulings.

3. It is objective for a lower court to impose rules that intend to screen important cases from frivolous ones and organize the pre-trial proceedings. However, it is unjust for a lower court to impose rules that solely intend to give the employer advantage over the employee, victim of discrimination. Petitioner's case showed, based on evidence, that summary judgement as an example of such local rules imposed by the lower court, aims at creating a hurdle intimidating the victim, delaying justice to finally deny it.

4. Victims of employment discrimination are often bound to resign or are discharged, as it is with petitioner's situation. Therefore, many of these victims become unable to hire lawyers and suffer in silence, as if the laws protecting their rights do no exist. Few others however, who did not resign and did not wait for their discharge, showed their despair by making rampages in shooting their co-workers.[1] This leads us to give an even more serious thought to summary judgement and as shown in this case, it made access to justice an impossible achievement. Therefore, and if we do not eliminate summary judgement in order to facilitate access to justice, we will run the risk of seeing, in the future, more shootings in workplaces.

5. Taking petitioner's case as an example, it is hard to imagine that every victim of employment discrimination must put her or his career and life on hold and

---

[1] The media reported so far two such cases, one of them occurred in the heart of Atlanta, as nine workers at two Buckhead Office Buildings were killed in July 1999. The second shooting occurred in Honolulu where seven co-workers were killed at Xerox Corp, in November 1999.

give up all the joys for five consecutive years, for the hope to see one day justice rendered to them. Petitioner filed her case last century in November 1996. We are in a new century and petitioner is still at the pursuit of justice just because of summary judgement imposed by the lower court. Luckily petitioner does not have children to feed and is agonizing for her own survival only. This is not always the case with the victims of employment discrimination who have children and other dependents to feed and care for.

6. Laws of justice must not hang on rules of injustice. Eliminating summary judgement and not allowing to replace it with a similar rule that would intend indirectly to serve a similar purpose, will be a significant step toward erasing sexual harassment and discrimination in workplaces.

7. Summary judgement led the way to the dismissal of petitioner's case, allowed respondent to recover its costs and left the actual victim to drown in her pains. However, when employers learn that they no longer can count on summary judgement that gives them such advantages over their victim employees, they will be compelled to think otherwise and most likely would decide to reinforce anti-discriminatory practices rather than facing justice that can be more costly to them. Title VII will then triumph and be lived as a reality but not looked at as a simple black on white written law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

"S/Adouda ADJIRI".
Dr. Adouda ADJIRI, *Pro Se*
1231 Clairmont Road# 40-D
Decatur, GA 30030
Phone: (404) 235 0647

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-14804
Non-Argument Calendar

D.C. Docket No. 96-03038-CV-RWS-1

ADOUDA ADJIRI, Dr.,

Plaintiff-Appellant

Versus

EMORY UNIVERSITY,

Defendant-Appellee

GARTH AUSTIN, M.D. Ph.D.,
WEIGO ZHAO, et al.,

Defendants

Appeal from the United States District Court for the
Northern District of Georgia

(February 2, 2001)

Before DUBINA, CARNES and MARCUS, Circuit Judges.

FILED
U.S COURT OF APPEALS
ELEVENTH CIRCUIT
FEB 2, 2001
THOMAS K. KAHN
CLERK

PER CURIAM:

Appellant Dr. Adouda Adjiri ("Adjiri"), a *pro se* plaintiff, appeals the district court's grant of summary judgement in her civil rights action brought under Title VII of the1964 Civil Rights Act, 42 U.S.C. § 2000e. On appeal, she maintains that she was a victim of sexual harassment and discrimination based on sex, race, and national origin. She argues that the district court erred in granting summary judgement to defendant Emory University.

We review a district court's grant of summary judgement in a Title VII action *de novo. Hinson v. Clinch County, Georgia Bd. of Educ.*, 231 F.3d 821, 826 (11 th Cir. 2000). Summary judgement is appropriate only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgement as a matter of law." Fed.R.Civ.P. 56(c).

After reviewing the record, we conclude the district court correctly found that Dr. Adjiri did not administratively exhaust her race and national origin claims. Furthermore, Dr. Adjiri failed to make a *prima facie* showing of hostile work environment-sexual harassment, sex discrimination, or retaliation. Accordingly, we affirm the district court's grant of summary judgement.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DR. ADOUDA ADJIRI, Plaintiff,	*	
vs.	*	CIVIL ACTION FILE
	*	NO. 1:96-cv-3038-RWS
EMORY UNIVERSITY, Defendant.	*	

JUDGEMENT

This action having come before the court, Honorable Richard W. Story, United States District Judge, for consideration of defendant's motion for summary judgement, and the court having granted said motion, it is

Ordered and Adjudged that the plaintiff take nothing; that the defendant recover its costs of this action, and the action be, and the same hereby, is **dismissed**.

Dated at Atlanta, Georgia, this 24th day of March, 1999.

Prepared, Filed, and Entered
in the Clerk's Office
March 24, 1999
Luther D. Thomas
Clerk of Court
By: "S/Deputy Clerk".

LUTHER D.THOMAS
CLERK OF COURT
By: "S/Deputy Clerk".

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 99-14804-JJ

ADOUDA ADJIRI, Dr.,

Plaintiff-Appellant,

versus

EMORY UNIVERSITY,

Defendant-Appellee.

On Appeal from the United States District Court for
The Northern District of Georgia

BEFORE: DUBINA, CARNES and MARCUS, Circuit Judges.
PER CURIAM:

The petition (s) for rehearing filed by Appellant is DENIED.

ENTERED FOR THE COURT:
"S/UNITED STATES CIRCUIT JUDGE".

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
MAR 08 2001
THOMAS K. KAHN
CLERK

ORD-41

APPENDIX D

GEORGIA DEPARTMENT OF LABOR
APPEALS TRIBUNAL – SUSSEX PLACE, SUITE 150
148 INTERNATIONAL BLVD. NE, ATLANTA, GEORGIA
30303-1751

DECISION OF ADMINISTRATIVE HEARING OFFICER
- DOCKET 16180A 1996 -
SSN 260-87-5869

FSO 3200
APPELLANT – CLAIMANT

APPEAL FILED 09/30/1996
APPEAL HEARD 10/28/1996
RELEASE DATE 10/29/1996

EMPLOYER:

EMORY UNIVERSITY
BENEFITS CENTER
1762 CLIFTON ROAD
ATLANTA GA 30322

MAIL TO:

ADOUDA ADJIRI
1231 CLAIRMONT
ROAD # 40-D
DECATUR GA 30030

CLAIMANT:

ADOUDA ADJIRI
1231 CLAIRMONT
ROAD # 40-D
DECATUR GA 30030

APPEARANCES: The claimant was present. The employer was represented by Sharon Carter, Benefits Specialist.

O. C. G. A. PROVISIONS AND ISSUES INVOLVED:

OCGA Section 34-8-194 (2) (A) – Whether the claimant's discharge or suspension was not a result of the claimant's failure to follow rules, orders, instructions, or for a failure to perform the duties for which hired and would be entitled to benefits; or the claimant was discharged or suspended for failure to follow rules, orders, instructions, or failure to perform the duties for which hired and would not be entitled to benefits. TO RE-QUALIFY: The individual must return to work and earn insured wages equal to ten (10) times the weekly benefits amount of the claim and the individual becomes unemployed through no fault on the part of the individual.

OCGA Section 34-8-157 (b) (3) – Whether the employer's account may be charged for benefits paid due to the employer's failure to respond in a timely manner to the notice of claim filing even if the determination is later reversed on appeal.

STATEMENT OF THE CASE: The claimant appealed the Department's initial determination released on September 23, 1996, which held that the claimant had been discharged by their most recent employer. This employer has shown, by a preponderance of the evidence, that the claimant was discharged for failure to obey, orders, rules, or instructions, or a failure to discharge the duties for which employed. A disqualification is required in this case and the claimant

would not be entitled to benefits effective September 8, 1996, as provided for under the provisions of OCGA Section 34-8-194 (2).

FINDING OF FACT: The claimant worked for the interested employer from November 1993 to July 22, 1996 when she was discharged due to alleged insubordination and job abandonment. The employer specifically declined to challenge the claimant's appeal of the preliminary determination disallowing claimant benefits and specifically asserted that the claimant was not at fault regarding the separation. The claimant denied all employer allegations and made no admissions against her best interest.

Timely separation information was furnished by the interested employer.

REASONS FOR DECISION: OCGA Section 34-8-194 (2) (A) provides for a disqualification if it is shown that an employee has been discharged from work with his most recent employer for failure to obey orders, rules, or instructions, or for failure to discharge the duties for which employed. That Section of the law places the burden of proof on the employer to show by a preponderance of the evidence that the employee was at fault by a deliberate, willing, and knowing action on his part.

Considering the employer's sworn affirmation that claimant was not at fault in her separation, as well as claimant's denial of fault and the absence of any admissions against her best interest, it is concluded that the employer has not carried its required burden to demonstrate that the claimant was discharged under disqualifying conditions.

OCGA Section 34-8-157 (b) provides that benefits paid shall be charged against the account of the most recent employer. The amount charged shall be the lesser of benefits paid for the period of unemployment

or, the amount of wages paid by such employer during the period beginning with the base period of the claim or the maximum benefit amount of the claim.

DECISION: The determination released by the Department September 23, 1996, disqualifying the claimant effective September 8, 1996, is hereby set aside. The claimant shall be entitled to unemployment insurance benefits effective September 8, 1996, under the provisions of OCGA Section 34-8-194 (2). The claimant will be entitled to benefits for all weeks that claimant has met all the reporting and eligibility requirements as provided for under the provisions of OCGA 34-8-195 (a) (3).

The employer's tax account shall be charged the lesser of benefits paid for the period of unemployment or, the amount of wages paid during the period beginning with the base period of the claim or the maximum benefit amount of the claim, in accordance with OCGA Section 34-8-157 (b).

ADOUDA ADJIRI DOCKET:16180A 1996
260-87-5869 Page 3

Decision Released: OCTOBER 29, 1996.

"S/PETER J. KATSEGIANES".
Administrative Hearing Officer

Appeal Rights Expire: NOVEMBER 13, 1996

If you desire to appeal this decision, notify this office, as indicated below, in writing. APPEAL RIGHTS EXPIRE 15 DAYS AFTER DECISION ISSUED. Vrs

GEORGIA DEPARTMENT OF LABOR
148 INTERNATIONAL BOULEVARD, N.E.
SUSSEX PLACE – SUITE 150
ATLANTA, GEORGIA 30303

This is to certify that this decision was mailed on the above release date by ____ SS _____. The postmark date is the release date.

DOL-473A (2/95)

Supreme Court, U.S.
FILED
JUL 11 2001
OFFICE OF THE CLERK

No. 00-1835

In The

Supreme Court of the United States

ADOUDA ADJIRI,

Petitioner,

v.

EMORY UNIVERSITY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

BURTON F. DODD
Counsel of Record
FISHER & PHILLIPS LLP
1500 Resurgens Plaza
945 E. Paces Ferry Road
Atlanta, Georgia 30326
(404) 231-1400

July 11, 2001

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

29 pp

QUESTION PRESENTED

Whether this Court should grant certiorari to review the court of appeals' summary affirmation of the district court's legal conclusion that, due to her failure to administratively exhaust her race and national origin claims, her failure to make a *prima facie* showing of hostile work environment sexual harassment, sex discrimination, or retaliation, and her failure to establish pretext, Petitioner did not establish a violation of Title VII.

CORPORATE DISCLOSURE

Respondent Emory University is a non-profit educational institution and has no publicly traded parent or subsidiary companies.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

CORPORATE DISCLOSURE ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

STATUTE INVOLVED 1

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE WRIT 7

I. This Ordinary Case Holds No Importance Beyond the Parties 7

II. The Courts Are Not in Conflict 8

III. Certiorari Is Not Warranted to Review Evidence 9

CONCLUSION 10

APPENDIX

Appendix A
Order of the District Court, March 24, 1999 ..... 1a

Appendix B
Magistrate Judge's Order and Report and Recommendation, January 25, 1999 ..... 1b

TABLE OF AUTHORITIES

Page

CASES

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986) 5

Braxton v. United States,
500 U.S. 344 (1991) 8

Brown v. General Services Admin.,
425 U.S. 820 (1976) 7

Celotex Corp. v. Catrett,
477 U.S. 317 (1986) 5, 6

Delgado v. Lockheed-Georgia Co.,
815 F.2d 641 (11th Cir. 1987) 4

Denney v. City of Albany,
247 F.3d 1172 (11th Cir. 2001) 9

Layne & Bowler Corp. v. Western Well Works, Inc.,
261 U.S. 387 (1923) 8

Martinez v. Court of Appeal of California,
528 U.S. 152 (2000) 8

Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986) 5

McDonnell Douglas Corp. v. Green,
411 U.S. 792 (1973) 7, 9

Palucki v. Sears, Roebuck & Co.,
879 F.2d 1568 (7th Cir. 1989) 6

Stevens v. Department of the Treasury,
500 U.S. 1 (1991) 9

St. Mary's Honor Center v. Hicks,
509 U.S. 502 (1993) 7

United States v. Johnson,
268 U.S. 220 (1925) 10

TABLE OF AUTHORITIES – Continued

Page

FEDERAL STATUTES

28 U.S.C. § 1254(1) 1

42 U.S.C. § 2000e 1

42 U.S.C. § 2000e-2(a)(1) 2

42 U.S.C. § 2000e-3(a) 2

42 U.S.C. § 2000e-5(e)(1) 2

FEDERAL RULE

Fed. R. Civ. P. 56 5

STATE STATUTE

O.C.G.A. § 34-8-194(2)(A) (1996) 4

OPINIONS BELOW

The Eleventh Circuit's per curiam summary affirmation of the district court's judgment is unpublished. (Pet. App. A) The district court's Order and the Magistrate Judge's Report and Recommendation are also unpublished. (Resp. App. 1a); (Resp. App. 1b) The judgment of the district court entered by the district court clerk on March 24, 1999 is also unreported, but appears at (Pet. App. B).

JURISDICTION

The clerk entered the judgment of the Eleventh Circuit on March 24, 1999 (Pet. App. B), and the Eleventh Circuit denied Petitioner's timely petition for rehearing on March 8, 2001. (Pet. App. C) Petitioner filed the petition for certiorari on June 11, 2001 and thus perfected this Court's discretionary jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

The statute involved is Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq*. The first relevant section is 703(a)(1), which provides in pertinent part:

It shall be an unlawful employment practice for an employer –

> (1) . . . to discharge any individual, or otherwise discriminate against any individual

> with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, . . . sex, or national origin. . . .

42 U.S.C. § 2000e-2(a)(1).

The following section of Title VII is also relevant and provides that:

> (1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred. . . .

42 U.S.C. § 2000e-5(e)(1).

Section 704(a) provides in pertinent part:

> (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-3(a).

STATEMENT OF THE CASE

This is a routine disciplinary discharge case under Title VII. Respondent hired Petitioner, a white female who originates from Algeria, on January 1, 1996 as a Lead Research Specialist in its Department of Pathology and Laboratory Medicine. (Resp. App. 2b) About six months

later, Respondent discharged Petitioner for her inability to get along with her co-workers, insubordination, and job abandonment. (Resp. App. 5b, 17b) At the summary judgment stage, Respondent produced the testimonial admissions of Petitioner which confirmed the legitimacy of the reasons for Petitioner's termination. (Resp. App. 3b)

Petitioner acknowledged in her deposition testimony that she had engaged in juvenile tactics such as placing a cardboard barrier between her workspace and that of another laboratory technician and putting her fingers in her ears so that she could block her co-worker's attempts to speak with her. (Resp. App. 3b) Petitioner also admitted that she refused to speak with her direct supervisor about a disagreement between her and her co-workers, that she hung up the telephone on her supervisor, and that later she even refused to return to work because she was "on strike" (Resp. App. 3b, 4b); yet, Petitioner claimed that she had been discharged for discriminatory reasons.

1.

Petitioner asks the Court to grant certiorari because she believes that Respondent "confessed" its fault for her termination before the Georgia Department of Labor (DOL) in the administrative proceedings concerning her efforts to obtain unemployment compensation benefits. Petitioner ignores the fact that she was initially disqualified from receiving unemployment benefits, because Respondent had demonstrated by a preponderance of the evidence that Petitioner was "discharged for failure to

obey orders, rules, or instructions, or a failure to discharge the duties for which employed." (Pet. App. D)

Petitioner also fails to note that Respondent "specifically declined to challenge her appeal of the preliminary determination" disallowing unemployment compensation benefits. (Pet. App. D) Because Respondent did not challenge the appeal, the hearing officer determined that Respondent did not meet its burden to demonstrate that Petitioner was discharged under disqualifying conditions.[1]

Since the purpose of the state administrative proceeding was to determine Petitioner's eligibility for unemployment compensation and not to test Petitioner's discrimination complaints, the administrative hearing officer's decision to award Petitioner benefits had no preclusive or determining effect.[2] The state administrative decision is not a judicial admission that Respondent discharged Petitioner because of her race, sex, national origin, or retaliatorily, and it did not raise an inference of discrimination. It is simply one fact among many. Thus, Petitioner's first reason for her request for certiorari is not an appropriate one for the exercise of this Court's discretionary jurisdiction.

---

[1] *See* O.C.G.A. § 34-8-194(2)(A) (1996) (Georgia's Employment Security statute places the burden of proof of just discharge or suspension for cause upon the employer).

[2] *See Delgado v. Lockheed-Georgia Co.*, 815 F.2d 641 (11th Cir. 1987) (declining to grant preclusive effect to the Georgia Employment Security Agency decision).

2.

Petitioner next contends that certiorari should be granted because the district court improperly overlooked the decision of Georgia DOL and Respondent's so-called "confession" of culpability. This notion has no validity. The district court and the court of appeals considered the *entire record.* (Pet. App. A); (Resp. App. 1a) Therefore, Petitioner's second reason for granting the writ of certiorari is equally uncompelling.

3.

Petitioner's final reason for this petition is based on her personal opinion that summary judgment should be eliminated in employment discrimination cases. Like her other justifications for this petition, Petitioner's partisan opinion about the application of Fed. R. Civ. P. 56 to employment cases does not support the grant of certiorari.

In 1986, this Court decided *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); and *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). These cases confirm the application of summary judgment proceedings to all cases, so that "factually insufficient claims or defenses [can] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources." *Celotex*, 477 U.S. at 327. The purpose behind Rule 56 was served in this case.

In *Celotex*, this Court stated that "[s]ummary judgment procedure is properly regarded not as a disfavored

procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.' " *Id.* at 327. Contrary to Petitioner's entreaty, Rule 56 has particular applicability to employment cases where unhappy employees and their advocates often attempt to use the anti-discrimination laws to advance notions of industrial justice foreign to our system.[3]

Summary judgment is an important and necessary procedure, but not without checks and balances. The district courts remain subject to plenary appellate review, as here. Ultimately, other than her personal dissatisfaction with the result before the lower courts, Petitioner has set forth no reason to cease the use of summary judgment procedure in employment discrimination cases.

4.

After a *de novo* review, the Eleventh Circuit affirmed the district court decision that Petitioner had not administratively exhausted her race and national origin claims, and that she had failed to make a *prima facie* showing of hostile work environment – sexual harassment, sex discrimination, or retaliation. Petitioner fails to address

---

[3] *See Palucki v. Sears, Roebuck & Co.*, 879 F.2d 1568, 1572-73 (7th Cir. 1989) (in which Judge Posner observed "[t]he workload crisis of the federal courts, and realization that [discrimination cases are] occasionally or perhaps more than occasionally used by plaintiffs as a substitute for principles of job protection that do not yet exist in American law").

these issues and thus fails to identify any error warranting relief from this Court.

REASONS FOR DENYING THE WRIT

The Eleventh Circuit's affirmation of the district court judgment is correct. It is consistent with this Court's decisions requiring the exhaustion of administrative remedies, *Brown v. General Services Admin.*, 425 U.S. 820 (1976), and establishing the order and allocation of proof under Title VII. *St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

I. This Ordinary Case Holds No Importance Beyond the Parties.

The district court granted Respondent's motion for summary judgment, concluding that Petitioner had failed to establish violations of Title VII with her allegations of gender, race, and national origin discrimination, sexual harassment, and retaliation. The district court ruled that Petitioner had not exhausted her administrative remedies, because although Petitioner had filed a charge of discrimination with the Equal Employment Opportunity Commission, her charge did not include allegations of race and national origin discrimination.

The district court also ruled that Petitioner had not established a claim of sexual harassment, because she offered no evidence to demonstrate that the conduct of which she complained was severe or pervasive; that she

had not established a *prima facie* case of sex discrimination; and that she had not established that Respondent's employment reasons were pretexts for sex discrimination.

The district court ruled that Petitioner had not established a *prima facie* case of retaliation and had not refuted Respondent's legitimate, non-retaliatory reasons for her discharge. The Eleventh Circuit affirmed.

Thus, this case is most ordinary, involving routine issues, routine facts, and a routine application of well-established law. This case is of importance only to the parties, and Petitioner's quest for her own brand of individual justice does not warrant the exercise of this Court's extraordinary judicial discretion. *See Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387 (1923) (in which Chief Justice Taft stated that "it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties. . . . ")

II. The Courts Are Not in Conflict.

This Court has exercised its certiorari jurisdiction when the decisions of the courts conflict, either among the United States courts of appeals, or between the courts of appeals and the highest state courts. *See, e.g., Martinez v. Court of Appeal of California*, 528 U.S. 152, 155 (2000) ("We granted certiorari because Martinez has raised a question on which both state and federal courts have expressed conflicting views"); *Braxton v. United States*, 500 U.S. 344, 347 (1991) ("A principal purpose for which we use our certiorari jurisdiction . . . is to resolve conflicts

among the Circuit Courts of Appeals and state courts concerning the meaning of provisions of federal law"); *Stevens v. Department of the Treasury*, 500 U.S. 1 (1991) (granting certiorari where the circuits were divided on the issue of whether a federal employee, who elects agency review of an age discrimination claim, must exhaust his administrative remedies before bringing a civil action).

There is no circuit conflict here; there is no federal-state conflict here. The order and allocation of proof in Title VII disparate treatment cases were established by this Court in *McDonnell Douglas, supra*, and continue to be followed by all of the Circuits, including the Eleventh Circuit.[4] Thus, not only is this case ordinary, it is legally insignificant since the applicable law is well-settled, having been resolved for years.

III. Certiorari Is Not Warranted to Review Evidence.

Petitioner asks the Court to grant the writ so the Court can state the record to find what she hopes is evidence illustrating error below. Petitioner also hopes that the Court will agree that she was insulted and harassed while working in Respondent's Pathology Department.

It has been long recognized, however, that this Court's certiorari jurisdiction is not invoked to review

---

[4] *Denney v. City of Albany*, 247 F.3d 1172, 1182 (11th Cir. 2001) (stating that "[a]bsent direct evidence, a plaintiff may prove intentional discrimination through the familiar *McDonnell Douglas* paradigm").

evidence. *United States v. Johnson*, 268 U.S. 220, 227 (1925) ("We do not grant a certiorari to review evidence and discuss specific facts"). Petitioner's request for a factual review of the record is foreclosed by long-standing historical precedent.

CONCLUSION

For the preceding reasons, the Court should deny the petition for a writ of certiorari to the judgment of the Eleventh Circuit.

Respectfully submitted,

BURTON F. DODD
Counsel of Record
FISHER & PHILLIPS LLP
945 East Paces Ferry Road
Suite 1500
Atlanta, Georgia 30026
(404) 231-1400

July 11, 2001

APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DR. ADOUDA ADJIRI, Plaintiff,	)	
v.	)	CIVIL ACTION
EMORY UNIVERSITY, Defendant.	)	NO. 1:96-CV-3038-RWS

ORDER

(Filed Mar. 24, 1999)

This case is before the Court for consideration of the Report and Recommendation [55-1] of Magistrate Judge John E. Dougherty recommending the granting of Defendant's Motion for Summary Judgment. Plaintiff has filed objections to the Report and Recommendation. After considering the entire record, the Court enters the following Order.

In her objections to the Report and Recommendation, Plaintiff points out that the Magistrate Judge had missed the fact that Dr. Austin's wife was not present for the entire conference in Taos, New Mexico. Dr. Austin booked a two room, one bath suite for himself, his wife, and Plaintiff to share. Dr. Austin and his wife slept in the bedroom, and Plaintiff slept in the other room. The conference lasted a week, and Plaintiff's wife was only present for the weekend. The arrangement understandably made Plaintiff very uncomfortable. However, Plaintiff acknowledges that Dr. Austin never touched her nor

mentioned sex to her nor made any type of sexual overture to her. Plaintiff perceived Dr. Austin's having arranged these accommodations as having created "the space for sexual activity." Deposition of Plaintiff p. 94.

While the Court appreciates and understands Plaintiff's discomfort with the accommodations in Taos, this modification of the factual findings by the Magistrate Judge does not alter the soundness of his ultimate conclusion. After reviewing the Report and Recommendation and the objections thereto, the Court approves the Report and Recommendation and adopts it as the Order of this Court with the exception of the modification of the factual findings stated above.

Accordingly, Defendant's Motion for Summary Judgment [49-1] is hereby **GRANTED**.

SO ORDERED, this 23rd day of March, 1999.

/s/ Richard W. Story
RICHARD W. STORY
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

DR. ADOUDA ADJIRI Plaintiff, v. EMORY UNIVERSITY Defendant.	)	CIVIL ACTION NO. 1:96-CV-3038-RWS

MAGISTRATE JUDGE'S ORDER AND REPORT AND RECOMMENDATION

Presently before the court are two motions filed by the defendant in this action. On July 9, 1998, Defendant Emory University filed a Motion for Summary Judgment in this court. Docket Entry [49]. Additionally, on September 17, 1998, defendant Emory University filed a Motion to Strike [53-1] plaintiff's reply to defendant's reply brief in support of its Motion for Summary Judgment. Docket Entry [53].

Defendant's Motion for Summary Judgment

Plaintiff filed the instant action alleging gender and racial discrimination, sexual harassment, and retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended. Defendant asserts that it is entitled to summary judgment as plaintiff has failed to establish a *prima facie* case as to any of her claims.

I. Statement of Facts

Defendant Emory University hired plaintiff on January 1, 1996 as a Lead Research Specialist in the Department of Pathology and Laboratory Medicine to work in the laboratory of Dr. Garth Austin at the Veterans Affairs (VA) Medical Center. (Undisputed). Plaintiff is of Algerian descent and considers her race to be white. Dr. Austin is Chief of Clinical Pathology at the VA and an Associate Professor of Pathology at Emory University. (Affidavit of Dr. Garth Austin, hereinafter referred to as ("Austin Aff.", ¶ 1). In January 1996, Austin's research staff consisted of Weiguo Zhao, a Lead Research Specialist, and Jipu Lu, a VA Lab Technician. Zhao obtained a master's degree in medicine in China, performed research with the Center for Disease Control, and worked with Dr. Austin for three years. (Affidavit of Weiguo Zhao, hereinafter referred to as "Zhao Aff.", ¶ 2). Lu was a professor of chemistry in China, graduated with a master's degree in science from Georgia State University, and worked with Austin since October 1995. (Affidavit of Jipu Lu, hereinafter referred to as "Lu Aff.", ¶ 2).

Within the first few weeks of her employment, plaintiff demonstrated difficulty interacting with her coworkers, including becoming impatient with Zhao. (Zhao Aff., ¶ 4). Plaintiff deliberately ignored Zhao's advice regarding the laboratory protocol and instead followed her own procedures. (Deposition of Adouda Adjiri, hereinafter referred to as "Plaintiff's Depo.", p. 30). In attempting to resolve the differences among his staff, Dr. Austin was told by plaintiff that plaintiff would never be friendly towards Zhao. (Austin Aff., ¶ 5). In fact, from that point on, plaintiff harbored great hostility toward

Zhao and demonstrated this contempt by placing a cardboard barrier between their respective spaces in the laboratory. (Plaintiff's Depo., p. 56). Additionally, plaintiff placed fingers in her ears so that she could block Zhao's attempts to speak with her. (Plaintiff's Depo., pp. 59-60).

Plaintiff again demonstrated her unhappiness with her co-workers in an incident which occurred on April 11, 1996 in which plaintiff was playing a computer game and listening to a radio as her co-workers worked nearby within the lab. (Plaintiff's Depo., p. 110). When Dr. Austin called plaintiff to discuss the disagreement, plaintiff refused to speak with Dr. Austin and ultimately hung up the phone. (Plaintiff's Depo., pp. 106, 112).

The next day, on April 12, plaintiff had another encounter with Zhao and she ultimately called the VA police department in order to file a report. After these arguments with Zhao, plaintiff decided to stop communicating with him. (Plaintiff's Depo., p. 155). Subsequently, Zhao informed Dr. Austin that he could no longer work with plaintiff. As a result, Dr. Austin offered to help plaintiff look for another position in order to alleviate the new found tension within the laboratory. (Plaintiff's Depo., p. 126).

Zhao had concerns with both plaintiff's personal disruptions as well as with the quality of her work. On June 20, Zhao wrote a letter to Dr. Austin citing specific instances where plaintiff's experiments were unsuccessful due to her lack of basic scientific knowledge as well as her failure to observe basic laboratory procedures. (Zhao Aff., ¶ 11). After receiving Zhao's letter. Dr. Austin

expressed concern to Mr. Tony Laracuente, VA Administrative Officer for Research and Development. Because Mr. Laracuente was concerned with the performance of the scarce medical resources contract and its impact on Dr. Austin's VA merit award, he met with Dr. Austin, plaintiff, Zhao, and Pam Mosely, VA Employee Relations Specialist, in order to mediate the situation. (Affidavit of Mr. Tony Laracuente, hereinafter referred to as "Laracuente Aff.", ¶ 4). During the meeting, plaintiff blamed all of the problems in the laboratory on Zhao. As a result of plaintiff's allegations, Zhao informed everyone at the meeting that he could no longer work under such circumstances and he immediately began looking for another job. (Zhao Aff., ¶ 12).

Plaintiff had another altercation with a co-worker on July 10, in which plaintiff taunted Ms. Lu until Lu left the laboratory in tears. Dr. Austin discussed the situation with plaintiff and suggested that the hostility in the laboratory needed to be resolved, and recommended that plaintiff take the next two days off in order to put the episode behind her. (Austin Aff., ¶ 17).

On July 15, plaintiff did not return to work, but instead left a voice mail message for Dr. Austin stating that she would not come back until the laboratory was made satisfactory for her return. (Plaintiff's Depo., p. 194). Plaintiff stopped by Dr. Austin's office later in the week threatening that she was "on strike". (Austin Aff., ¶ 18). Plaintiff never returned to work in the laboratory after her July 10 disagreement with Lu. (Plaintiff's Depo., p. 144). On July 19, plaintiff informed Dr. Austin by written letter that she was "on strike until the minimum

at least, of safety and respect is guaranteed." (Defendant's Exhibit 7). After Ms. Carol McMurtray, Business Manager for the Department of Pathology and Laboratory Medicine, was informed that plaintiff did not return to work as expected, she exercised her authority to terminate plaintiff's employment based on her unwillingness to interact with her colleagues, insubordination to her supervisor, and job abandonment. (McMurtray Aff., ¶ 8). On July 22, Ms. McMurtray prepared a written letter to the plaintiff to that effect. (Plaintiff's Depo., Defendant's Exhibit 13).

Plaintiff's Allegations of Sexual Harassment

Plaintiff complains that she suffered sexual harassment by Zhao when he repeatedly insulted her and placed restrictions upon her work. (Complaint ¶ 4). Specifically, plaintiff asserts that Zhao gave her the responsibility of ordering the supplies for the laboratory, prevented her use of the laboratory UV light and chemical hood, and interrupted her telephone conversations. (Plaintiff's Depo., pp. 27, 51-52). Zhao asserts that he neither had the authority to assign plaintiff's lab duties, nor did he prevent her from utilizing common laboratory equipment. (Zhao Aff., ¶ 9). Plaintiff also complains that Dr. Austin was sexually harassing because he winked at her, made remarks about her dress, hats, and hair, volunteered to drive her home, asked her questions about her private life, and took her to dinner once. (Complaint ¶ 8). Additionally, plaintiff complains that Dr. Austin sexually harassed her by booking only one room for a medical conference in New Mexico which plaintiff attended along with Dr. Austin and his wife. At the time plaintiff

announced the travel arrangements, plaintiff offered no objections. (Austin Aff., ¶ 8). At the conference, plaintiff slept on a pull out bed in an outer room, and Dr. Austin and his wife slept in a bed in a separate room. In her deposition, plaintiff stated that Dr. Austin never touched plaintiff or solicited any sexual favors at any time. (Plaintiff's Depo., pp. 94-95). In fact, after she returned from the conference, plaintiff stated that Dr. Austin had been a "perfect gentleman." (Affidavit of Patricia Bidgood, hereinafter referred to as "Bidgood Aff.", ¶ 2).

On July 24, 1996, plaintiff filed an internal grievance disputing her discharge and again claimed that she suffered harassment by her co-workers and sexual harassment by her supervisor. Plaintiff did not include any claims of her race or national origin discrimination in her July 24 grievance form. (Plaintiff's Depo., Exhibit 14). On August 27, 1996, plaintiff filed a discrimination charge with the EEOC alleging only sex discrimination and retaliation. Plaintiff's charge and supporting affidavit filed with the EEOC do not contain any allegations of race and/or national origin discrimination.

II. Conclusions of Law

A. Summary Judgment Standard

At the summary judgment stage, the court must examine all evidence in the light most favorable to the non-moving party and resolve all reasonable doubts in his favor. *Earley v. Champion Int'l Corp.*, 907 F.2d 1077 (11th Cir. 1990). A motion for summary judgment shall be

granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there was no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56.

On a motion for summary judgment, "[t]he moving party bears the initial burden to show the district court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial." *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). Once the movant has pointed out the nonexistence of any genuine issue of material fact, it is up to the plaintiff to produce some evidence in support of her claim. *Velten v. Lippert*, 985 F.2d 1515 (11th Cir. 1993). Mere conclusory allegations of harassment are not enough to withstand a motion for summary judgment. *Carter v. Miami*, 870 F.2d 578, 585 (11th Cir. 1989). In other words, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original). An issue is not genuine if unsupported by evidence or if created by evidence that is "merely colorable" or "not significantly probative." *Id.* at 250. Likewise, a fact is only material if designated by controlling substantive law as an essential element of plaintiff's case. *Id.* at 248.

If neither party can prove the existence or nonexistence of an essential element of a claim, summary judgment will be granted if the movant shows that the plaintiff will be unable to meet her burden of proof at

trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 91 L. Ed.2d 265 (1986). The movant's burden therefore requires a " 'showing' — that is, pointing out to the district court — that there is an absence of evidence to support the nonmoving party's case." *Id.*

A. Exhaustion of Local Remedies

Defendant Emory University moves for summary judgment on plaintiff's race and national origin discrimination claims because it contends that plaintiff has not exhausted her administrative remedies. Although she did file an EEOC charge, it is undisputed that she only alleged gender discrimination and sexual harassment. In response, plaintiff argues that the omission came as a result of her *pro se* status.

Under Title VII, a plaintiff must first exhaust his administrative remedies before bringing suit in federal court. *Brown v. General Svcs. Adminis.*, 425 U.S. 820, 835, 96 S. Ct. 1961, 48 L. Ed.2d 402 (1976); *Moore v. Alabama State Univ.*, 864 F.2d 103, 104 (11th Cir. 1989). In other words, it is mandatory for plaintiff to file a charge of discrimination with the EEOC prior to seeking judicial relief. The Fifth Circuit explained the purposes behind this requirement:

> The logic of this rule is inherent in the statutory scheme of Title VII. A charge of discrimination is not filed as a preliminary to a lawsuit. On the contrary, the purpose of the charge of discrimination is to trigger the investigatory and conciliatory procedures of the EEOC. Once a charge has been filed, the Commission carries out its investigatory function and attempts to obtain

> voluntary compliance with the law. Only if the EEOC fails to achieve voluntary compliance will the matter ever become the subject of court action. . . . Within this statutory scheme, it is only logical to limit the permissible scope of the civil action to the scope of the EEOC investigation which can *reasonably be expected to grow out of the charge of discrimination.*

Sanchez v. Standard Brands, Inc., 431 F.2d 455, 466 (5th Cir. 1970) (emphasis added). Courts have recognized an exception to the exhaustion requirement for claims of discrimination which arose prior to the filing of the EEOC charge but were not raised in the charge. In that instance, plaintiff will be excused from the exhaustion requirement if he can show that the unexhausted claim is "reasonably related" to the claims raised in his EEOC charge. *Sanchez*, 431 F.2d at 466; *Evans v. United States Pipe & Foundry Co.*, 696 F.2d 925, 928 (11th Cir. 1983); *Boge v. Ringland-Johnson-Crowley Co.*, 976 F.2d 448 (8th Cir. 1992) (citing *Anderson v. Block*, 807 F.2d 145, 148 (8th Cir. 1986)); *Brown v. Hartshorne Public Sch. Dist.*, 864 F.2d 680, 682 (10th Cir. 1988). If the subsequently raised claim does not meet this test, the district court is precluded from hearing it.

In *Equal Employment Opportunity Commission v. Mississippi College*, 626 F.2d 477 (5th Cir. 1980),[1] the plaintiff filed a charge for discrimination in which she alleged that defendants had failed to hire her for a full-time professorship because of her gender. She later filed an amended

---

[1] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), this court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

charge, alleging that defendants also discriminated against her based on her race when they denied her the professorship. To avoid being time-barred, plaintiff argued that her amended charge related back to her original charge. While recognizing that EEOC charges must be "liberally construed because charging parties usually are unfamiliar with the technicalities of formal pleadings and are not assisted by an attorney," the court determined that plaintiff's allegations of racial discrimination did not relate or grow out of her earlier allegations of gender discrimination. *Id.* at 483 (citing *Tillman v. City of Boaz,* 548 F.2d 592, 596 (5th Cir. 1977); *Sanchez v. Standard Brands,* Inc., 431 F.2d 455, 462-63 (5th Cir. 1970)). *Accord Buffington v. General Time Corp.,* 677 F. Supp. 1186, 1194 (M.D. Ga. 1988) (age discrimination claim not reasonably related to race discrimination claim); *Thornton v. Georgia Power Co.,* 31 F.E.P. 901 (N.D. Ga. 1981) (sex discrimination claim not reasonably related to race discrimination claim); *Whittaker v. Department of Human Resources,* 86 F.R.D. 689 (N.D. Ga. 1980) (same). The undersigned finds that plaintiff's claim of race and national origin discrimination is not "reasonably related" to her claims of gender discrimination and sexual harassment raised in her EEOC charge. Accordingly, the undersigned finds that defendant's Motion for Summary Judgment should be GRANTED as to plaintiff's race and national origin discrimination claims.

B. Plaintiff's Hostile Environment Claim

Plaintiff has also included a claim of sexual harassment. However, defendant maintains that plaintiff's claim must fail as the record is absent of any conduct which is

sufficiently pervasive or severe so as to alter the plaintiff's working environment or that defendant was aware of such conduct and failed to take prompt, remedial action.

A defendant is liable under Title VII if the employee has been discriminated against on the basis of race or sex, and that discrimination has created a hostile or abusive working environment. *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 106 S. Ct. 2399, 91 L. Ed.2d 49 (1986). In *Harris v. Forklift Sys.*, 510 U.S. 17, 114 S. Ct. 367, 126 L. Ed.2d 295 (1993), the Supreme Court explained that the relevant inquiry looks at whether the actions of the defendants altered the working condition to such an extent that a reasonable person would find the atmosphere hostile and abusive and to such an extent that the plaintiff subjectively perceived the atmosphere as such. *Harris*, 126 L. Ed.2d at 302. The Court set forth factors which are to be examined in determining whether abuse in the workplace rose to this standard. The Court held that:

> These may include the *frequency* of the discriminatory conduct; its *severity*; whether it is *physically threatening or humiliating*, or a mere offensive utterance; and whether it *unreasonably interferes* with an employee's work performance.

Id. at 302-03 (emphasis added). The Court held that although the psychological effect on an employee may be considered, it is only one factor in the analysis, and that if the environment would reasonably be perceived as hostile and abusive, a showing of serious psychological harm

is not necessary. *Id.* In other words, the court must examine the totality of the circumstances, looking at the combined effect of all of the incidents. *Id.; Edwards v. Wallace Community College,* 49 F.3d 1517, 1521-1522 (11th Cir. 1995); *Vance v. Southern Bell Tel. & Tel. Co.,* 863 F.2d 1503, 1510-11 (11th Cir. 1989).

When the employee seeks to hold the employer liable for harassment by her supervisor, the employee must prove an additional element, specifically that the employer knew or should have known that the harassment was occurring, and that the employer failed to take prompt remedial action. In the recent case of *Faragher v. City of Boca Raton,* 117 S.Ct. 2275 (1998), the Court stated the following:

> An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence. The defense comprises of two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (2) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Id. at 2285. Thus, the imposition of vicarious liability applies only in those situations where a "supervisor's harassment culminates in a tangible employment action

such as discharge, demotion, or undesirable reassignment." *Id.*

Defendant argues that plaintiff cannot satisfy her *prima facie* burden because she does not satisfy the *Harris* Test. Initially, defendant maintains that the conduct about which plaintiff complains does not rise to the sufficient level of pervasiveness to be actionable. In *Baskerville v. Culligan Int'l Co.*, 50 F.3d 428 (7th Cir. 1995), the Court stated that a few isolated instances of racial animus do not rise to the level of frequency to create a workplace permeated with racial hostility. In that case, the court held that seven racial incidents or remarks in seven months is not pervasive enough to rise to the level of harassment.

In the instant case, plaintiff offers no evidence to demonstrate that the conduct which she complained about was severe or pervasive. In support of her claim, plaintiff cites only that Dr. Austin winked at her, complimented her hair and clothing, invited her to dinner once, and booked one hotel room in which Dr. Austin and his wife slept together during a scientific conference. Accordingly, defendant also maintains that the conduct complained of was not sufficiently severe in nature. Instead, defendant asserts that the specific instances of alleged harassment are not even offensive. Such general references alleged by plaintiff, occurring infrequently and in isolated circumstances, do not rise to the level of hostility or severity as anticipated by the Supreme Court. *Harris*, 510 U.S. at 17. As stated in *Harris*, "the 'mere utterance of an epithet which engenders offensive feelings in an employee does not sufficiently affect the conditions of

employment to implicate Title VII." *Id.* at 21. Here, plaintiff has portrayed an environment in which she was subjected to several compliments and a winking of the eye. Further, plaintiff bases her claim, in part, on the fact that Dr. Austin booked only one room for a conference which he attended with is wife. Accordingly, the court finds that plaintiff has not met her burden to establish the severity of defendant's conduct.

In *Ealey v. Dekalb County Hospital Auth.*, 59 Fair Empl. Prac. Cases (BNA) 1803 (N.D. Ga. 1988), the court found that the utterance of racial epithets by a co-employee does not demonstrate a hostile employment environment. Also in the case of *Robertson v. Georgia Dept. of Corrections*, 725 F.Supp. 533 (S.D. Ga. 1989), in which a black employee's allegations that he was moved to an inferior office, subjected to racially demeaning jokes, that specific supervisors called him "affirmative action boy" and "ole boy" were insufficient to make out a racial harassment claim. The *Robertson* case also noted that "[t]o recognize a cause of action based upon a discriminatory work environment, the court cautioned that the case should not be 'interpreted as holding that an employer's mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee falls within the proscription of Title VII." *Id.* at 538 (quoting *Rogers v. EEOC*, 454 F.2d 234, 238 (5th Cir. 1971)). Plaintiff offers no case law in her reply brief to diminish the strength and persuasiveness of defendant's argument as to plaintiff's hostile working environment claim. Additionally, there is no evidence presented by plaintiff to suggest a level of conduct which surpasses that of the defendant in the *Robertson* case which would establish a hostile environment. While this

court certainly does not condone or encourage insolent, discourteous behavior among co-workers, the undersigned finds that the conduct described of in this case fails to rise to the level of conduct proscribed by Title VII. Accordingly, the plaintiff has failed to establish any element of her *prima facie* case for hostile environment employment discrimination. The court therefore finds that the plaintiff's case must fail as to the claim of the existence of a sexually hostile working environment.

C. Plaintiff's Discrimination Claim

Plaintiff has also asserted a claim of gender discrimination against the defendant. Defendant contends, however, that plaintiff's claim must fail as she has neglected to even attempt to establish a prima *facie case* of discrimination.

A Title VII plaintiff may attempt to show discriminatory intent by either direct or indirect evidence. Because plaintiff has not presented any direct evidence with regard to her reduction in commission, the court will apply the framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed.2d 668 (1973). Under the *McDonnell Douglas* framework, the plaintiff has the burden of proving a *prima facie* case of discrimination by a preponderance of the evidence. To establish a *prima facie* case of disparate treatment with regards to a pay disparity, plaintiff must show the following: (1) he is a member of a protected class; (2) an adverse employment action was taken against him; (3) similarly situated employees who were not members of his class were not subjected to the adverse action.

If the plaintiff meets the burden of presenting a *prima facie* case, a presumption of discriminatory intent arises. *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 254, 101 S. Ct. 1089, 67 L.Ed.2d 207 (1981). The burden of production then shifts to the defendant to articulate a legitimate, non-discriminatory reason for the alleged discriminatory action. The defendant's burden is merely one of production, not proof. *Perryman v. Johnson Products Co.*, 698 F.2d 1138, 1142 (11th Cir. 1983). Finally, if the defendant carries the burden, the plaintiff then has the opportunity to prove by a preponderance of the evidence that the reasons offered by the defendant were actually a pretext for discrimination. *McDonnell Douglas*, 411 U.S. at 802-04. The burden never shifts but remains with the plaintiff at all times. *Burdine*, 450 U.S. at 253. The ultimate issue is whether the plaintiff has demonstrated that the defendant has intentionally discriminated against her. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 113 S. Ct. 2742, 125 L.Ed.2d 407 (1993).

Defendant asserts, first, that it is entitled to summary judgment on plaintiff's disparate treatment claim because she cannot meet her initial burden of proving gender discrimination. In fact, plaintiff argues, without the support of any authority, that she "does not bear the burden to prove her case in response to a Motion for Summary Judgment." (Plaintiff's Brief, p. 2).

Hence, because the plaintiff has failed to demonstrate the existence of discrimination on the basis of sex by offering evidence of disparate treatment, her *prima facie* case must fail. As stated in the case of *Mitchell v. Carrier Corp.*, 954 F.Supp. 1576, 1580 (M.D.Ga. 1995), aff'd, 108 F.3d 343 (11th Cir. 1997), in order to overcome summary

judgment, the plaintiff bears the onus of proving by a preponderance of the evidence that a *prima facie* case of discrimination exists. In the instant case, the undersigned finds that the plaintiff has failed to meet this burden. Accordingly, the court recommends that the defendant's Motion for Summary Judgment be granted as to this claim.

Additionally, even if this court were to find that plaintiff has established a *prima facie* case of discrimination, she has failed to even attempt to demonstrate that plaintiff's proffered reasons for her dismissal were pretextual. It is clear from a review of the record that plaintiff's hiring creating an atmosphere of great discord and disharmony. More, it appears that this unhappy environment came as a result of plaintiff's refusal to work in a congenial environment with her co-workers. In fact, plaintiff responded to defendant's requests to resolve the problems by "going on strike." Thus, the court finds that the defendant has clearly met its burden of articulating a legitimate, non-discriminatory justification for plaintiff's termination. More, plaintiff has offered no facts to refute this showing. Instead, plaintiff offers the self serving conclusory statement that the defendant discriminated against her. However, without even an allegation of specific facts, plaintiff's case must fail.

Despite plaintiff's assertions, there is no evidence that the defendant terminated plaintiff's employment as a result of gender discrimination. To overcome defendants' showing, plaintiff must present "concrete evidence in the form of specific facts." *Earley*, 907 F.2d at 1081. As the Eleventh Circuit has explained:

> We have stressed before to district courts that, given the ease of pleading cases of discrimination, plaintiffs seeking to avoid summary judgment should be strictly held to the requirements of Rule 56(e); the plaintiff must present specific nonconclusory facts that would support a jury verdict against the particular defendant on discriminatory intent.

Ratliff v. DeKalb County, 62 F.3d 338, 341 (11th Cir. 1995). There are simply no facts to support such a jury verdict. Accordingly, defendant should be granted summary judgment on plaintiff's gender discrimination claim.

D. Plaintiff's Retaliation Claim

In her complaint, plaintiff also maintains that the defendant is liable under Title VII for retaliated against plaintiff for engaging in statutorily protected activity. In order to present a *prima facie* case of retaliation under Title VII, plaintiff must show that she was engaged in protected opposition to Title VII discrimination, that she was subjected to an adverse employment action, and that there was a causal link between his opposition and the adverse employment action. *Whatley v. Metropolitan Atlanta Rapid Transit Authority*, 632 F.2d 1325, 1328 (5th Cir. 1980). *See also, Tipton v. Canadian Imperial Bank of Commerce*, 872 F.2d 1491 (11th Cir. 1989); *Donnellon v. Fruehauf Corp.*, 794 F.2d 598 (11th Cir. 1986); *Simmons v. Camden County Bd. of Education*, 757 F.2d 1187 (11th Cir. 1985), *cert. denied*, 474 U.S. 981, 106 S. Ct. 385, 88 L.Ed. 2d 338 (1985); *Hamm v. Members of Bd. of Regents*, 708 F.2d 647 (11th Cir. 1983). In order to demonstrate a causal link, the plaintiff must show that the person or persons who

allegedly retaliated were aware of the protected opposition. *McCollum v. Bolger*, 794 F.2d 602, 610 (11th Cir. 1986), *cert. denied* by *McCollum v. Tisch*, 479 U.S. 1034, 107 S. Ct. 883, 93 L.Ed. 2d 836 (1987).

Plaintiff alleges that the defendant retaliated against her because of her protected activity by discharging her. Conversely, defendant maintains that, although plaintiff may establish the first part of a *prima facie* case of retaliation, protected activity, she can not demonstrate the necessary causal link between his protected activity and any alleged adverse employment action.

Defendant maintains that plaintiff has failed to establish the requisite causal connection between her protected activity and the defendant's decision to terminate her employment. Defendant asserts that the mere timing of the two events is insufficient, without more, to establish pretext. As stated by the court in the case of *Robinson v. AFA Corp.*, 870 F.Supp. 1077, 1085 (N.D.Ga. 1994) (quoting *Jackson v. St. Joseph State Hosp.*, 840 F.2d 1387, 1391 (8th Cir. 1987), if the timing of an action were all that was required to establish a proper nexus, "[t]hen a disgruntled employee, no matter how poor his performance or how contemptuous his attitude toward his supervisors, could effectively inhibit a well deserved discharge by merely filing, or threatening to file a discrimination complaint." In the present case, the court finds that the plaintiff has offered no evidence of a proper nexus aside from the temporal proximity between the two actions. This assertion, without more, must fail as a matter of law.

However, even if the court were to find that plaintiff has established a *prima facie* case of retaliation with

respect to the action of the defendant, the undersigned finds that defendant has articulated a legitimate justification for its employment action. Specifically, defendant has proffered legitimate personnel justifications warranting plaintiff's dismissal. As stated by the defendant, the Eleventh Circuit has recently held that in a mixed motive case involving retaliation, the employer prevails if it can demonstrate its legitimate reason for taking an adverse employment action would have induced the same action regardless of the plaintiff's protected activity. *Burrell v. Board of Trustees of Georgia Military College*, 125 F.3d 1390, 1395 (11th Cir. 1995).

Here, plaintiff has not and can not refute the necessity that motivated the defendant to take action. Instead, plaintiff's retaliatory discharge claim is based only upon her subjective opinion. This belief is insufficient to establish pretext. Accordingly, the undersigned finds that defendant's Motion for Summary Judgment should be GRANTED with respect to plaintiff's claim of retaliation under Title VII.

Conclusion

Accordingly, based on the foregoing reasons, the undersigned ORDERS that plaintiff's Motion to Respond to Defendant's Reply Brief be DENIED as it is in violation with the Local Rules of this court. Also based on the foregoing reasons, the undersigned RECOMMENDS that the defendant's Motion for Summary Judgment be GRANTED as to plaintiff's Federal Claims of gender, race and national origin discrimination, sexual harassment, and retaliation in violation of Title VII.

SO ORDERED and REPORTED AND RECOMMENDED, this 25th day of JANUARY, 1999.

/s/ John E. Dougherty
JOHN E. DOUGHERTY
UNITED STATES DISTRICT
JUDGE

(9)

Supreme Court, U.S.
FILED
JUL 24 2001
CLERK

No. 00-1835

IN THE

Supreme Court of the United States

ADOUDA ADJIRI,
Petitioner,

v.

EMORY UNIVERSITY,
Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

REPLY TO BRIEF IN OPPOSITION

DR. Adouda ADJIRI, *Pro Se*
1231 Clairmont Road # 40-D
Decatur, GA 30030
Phone: (404) 235 0647

July 24, 2001

13 pp

TABLE OF CONTENTS

Page

ARGUMENT..... 1

I. RESPONDENT'S CLAIM OF FAILURE TO ESTABLISH PRETEXT IS GROUNDLESS..... 1

1. Petitioner Exhausted Her Race And National Origin Claims..... 2

2. Sexually Hostile Work Environment Claim..... 4

3. Sex Discrimination Claim..... 5

4. Retaliation Claim..... 6

II. RESPONDENT ERRONEOUSLY CLAIMS THIS CASE HOLDS NO IMPORTANCE BEYOND THE PARTIES..... 8

III. PETITIONER'S QUESTIONS HAVE NOT BEEN RAISED BEFORE..... 8

IV. RESPONDENT'S CLAIM THAT CERTIORARI IS NOT WARRANTED TO REVIEW EVIDENCE IS WITHOUT MERIT..... 9

V. RESPONDENT'S DESPERATE CLAIM THAT IT DID NOT ACTUALLY CONFESS UNDER OATH IS POOR AND WITHOUT MERIT..... 9

CONCLUSION..... .. 10

TABLE OF AUTHORITIES

Cases	Page
Caleshu, 737 F. Supp. at 1081	4
Canitia v. Yellow Freight System, Inc., 903 F.2d 1064, 1066 (6th Cir. 1990)	7
Chambers v. TRM Copy Centers Corp., 43 F. 3d 29, 37 (2d Cir. 1994)	6
Erebia v. Chrysler Plastics Prods. Corp., 772 F2d 1250 1256 (6th Cir. 1985)	5
Faragher v. Boca Raton, 534 U.S. 775; 118S Ct 2275; 141 L Ed 2d 662 (1998)	5
Hall v. Gus Constr. Co., Inc., 842 F. 2d at 1014	4
Harris v. Forklift Systems, Inc., 510 U.S. 17, 21; 114 S Ct 367; 126 L Ed 2d 295 (1993)	5
Schroder v. Schock, 42 FEP cases 1112 (D. Kans. 1986)	5
Federal Statutes & Titles	
29 C.F.R. § 1604. 11 (a) (1996)	5,6,7
42 U.S.C. § 2000e(a)(1)	2
Title II of the Energy Reorganization Act of 1972	6
Title VII of the Civil Rights Act of 1964	2

ARGUMENT

I. Respondent's Claim Of Failure To Establish Pretext Is Groundless.

If this case were to last hundred years and if for each year petitioner had presented hundred different evidences and if respondent had confessed its wrongdoing hundred different times, the District Court would still have dismissed this case hundred times, and the Appeal Court would still have affirmed hundred times, the District Court's decision granting respondent's summary judgement motion.

That would not be because it is difficult to pass summary judgement but because it is impossible to pass summary judgement in a situation where dismissal is highly desired. Thus, thousands of evidences and hundred confessions would never be convincing enough because once dismissal is wanted in a an employment discrimination case, summary judgement is the way to go and summary judgement makes it happen no matter what.

The District Court censored respondent's confession and did not consider petitioner's answers filed in opposition to summary judgement. These factors combined with the District Court's failure to compel respondent to answer petitioner's questionnaire, made it easy for the court to reach the conclusion recommending the granting of respondent's motion for summary judgement.

The Appeal Court affirmed the District Court's decision resuming the same argument. Knowing the confession of respondent, this led to raise the first question of the petition to the Supreme Court.

When petitioner showed the *prima facie* of her case,

the Appeal Court still denied her petition for panel rehearing but without stating the reason (s) for such action. Had there been any further reproach against petitioner, the Appeal Court would have stated it in the order of March 8, 2001.

As filed in her petition to the Appeal Court, petitioner met all the conditions for her claims and are summarized bellow:

1. Petitioner Exhausted Her Race And National Origin Claims:

Title VII of the Civil Rights Act of 1964 prohibits an employer from "discriminating against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin" 42 U.S.C. § 2000e(a)(1).

Adjiri is white and a citizen of Algeria. Adjiri belongs to a protected class. Adjiri entered legally the United States and was officially employed by Emory University. Title VII prohibits discrimination because of someone's race and national origin and Title VII does not specify race discrimination as only whites discriminating against blacks. Adjiri is legally protected because of her membership of a protected class.

Black female staff at Emory handled Adjiri's internal complaints: Mrs. Lelia Crawford, Dean of the International Office at Emory, Mrs. Ozella Johnson of the Employment Relations Office (ERO), and Mrs. Paulette Dilworth of the Equal Employment Opportunity Office (EEO).

Mrs. Crawford who previously led Adjiri to the ERO and EEO offices and told Adjiri about her rights to complain, made the following discriminatory statements in September 1996: "these things happen in your country" and then added: "in your country you

can't even complain".

Mrs. Johnson played with Adjiri's innocence and instead of handling herself Adjiri's complaint, she directed Adjiri to send her complaint to Mrs. Peggy Rogers, who was then unknown to Adjiri. Mrs. Rogers is a Work Compensation Specialist but not an Employment-Relations Specialist. No action was taken to improve her work conditions as Adjiri requested in her complaint to the ERO.

Mrs. Dilworth was aggressive when she met with Adjiri for the first time and refused to shake Adjiri's hand when Adjiri greeted her. Consequently, Dilworth too took no action and when Adjiri appealed, the decision of May 23, 1996, Dilworth never responded (App. Ex. 12 and 15). Adjiri's work environment grew more hostile as Adjiri was assaulted on the job on July 10, 1996 then discharged on July 22, 1996 (In Adjiri's response to Defendant's interrogatories).

After the last meeting with Mrs. Crawford in September 1996, Adjiri went to file a report with the Emory Police Department. The later refused to document Adjiri's complaint about race and national origin discrimination and got rid of Adjiri by sending her to the Human Resources Department at Emory. Adjiri had no help from the Human Resources (In Adjiri's response to defendant's interrogatories).

When no one stepped in to stop Emory from further abusing Adjiri, Emory went even farther, exercised its power and used the local Immigration and Naturalization Service (INS). The INS then targeted Adjiri, seized her passport along with the document (Form I-94) that shows Adjiri's legal entry to the United States. The INS took Adjiri's fingerprints and records of her possessions.

Adjiri went back to the EEOC and filed her second complaint (App. Ex. 33). This time, Adjiri did not leave the EEOC office until Mrs. Patricia Quashie of the

EEOC wrote down Adjiri's race and national origin claims and assigned a case number to Adjiri's complaint. In the first EEOC complaint (App. Ex. 25), Mrs. Judith Lightsey of the EEOC did not assign a case number and refused to document Adjiri's race and national origin claims. Only few days later and after Adjiri's request, a case number was assigned to her first EEOC complaint. In both cases, the EEOC failed to take action.

2. Sexually Hostile Work Environment Claim:

Petitioner also met all the conditions for her claim of a sexually hostile work environment.

a) Adjiri is a female and belongs to a protected class. Adjiri did not solicit nor invite the harassment and regarded the conduct undesirable and offensive. *See Caleshu*, 737 F. Supp. at 1081. Adjiri did not welcome the harassment and made contemporaneous complaints about it. The misconduct complained about, actually occurred and was documented.

b) The harassment was pervasive and regular: Zhao's insults started the third week of January 1996. In February 1996, Mr. Roland Philips and Mr. James Davis of the VA RSO assisted Adjiri in the radiation safety matters. After this, Zhao became more aggressive and insulting and again prevented Adjiri from using the printer in the lab. *See Hall v. Gus Constr. Co., Inc.*, 842 F. 2d at 1014. Adjiri's cry for help led to a meeting, with the VA Research Administrator Mr. Tony Laracuante, in June 1996. No action was taken and the harassment continued as on July 10, 1996, Adjiri was assaulted on the job. The harassment affected Adjiri's work-performance and altered Adjiri's conditions of employment as it created an abusive working

environment. *See Erebia v. Chrysler Plastics Prods. Corp.*, 772 F2d 1250 1256 (6th Cir. 1985). The degree of severity rose to a level that would affect any reasonable female confined to those hostile conditions. *See Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21; 114 S Ct 367; 126 L Ed 2d 295 (1993) and 29 C.F.R. § 1604. 11 (a) (1996).

c) The harassment was based on Adjiri's gender female. Austin witnessed Zhao's insults to Adjiri, tolerated the conduct and did nothing to stop it. Adjiri did not submit to Austin's implicit sexual advances when Austin created an environment favorable for sexual activity in his hotel suite. Adjiri did not permit Austin to touch her, each time Austin came too close. Austin has authority to hire or discharge that is delegated to him by the employer Emory University. Zhao has no authority to hire or discharge. Adjiri was discharged in July 1996. In *Schroder v. Schock*, 42 FEP cases 1112 (D. Kans. 1986) the court held an employer liable for *quid pro quo* harassment by supervisor who had authority to recommend plaintiff's discharge.

d) Emory University knew about the harassment and did nothing to stop it but tolerated the conditions. Emory University never claimed having taken any corrective measure to protect Adjiri from the harassment she complained about. Adjiri suffered intentional discrimination because of her sex female in violation of Title VII. *See Faragher v. Boca Raton*, 534 U.S. 775; 118S Ct 2275; 141 L Ed 2d 662 (1998).

3. Sex Discrimination Claim:

Sexual harassment is a form of sex discrimination prohibited by Title VII as amended in 1980. Adjiri met the requirements for her claim of sex discrimination.

a) Adjiri is a female and a member of a protected class. As a member of a protected class, Adjiri is legally protected from discrimination based on her gender.

b) Adjiri was qualified for the position she held for two years in the Biology Department. Adjiri was qualified for the position she occupied in the Pathology Department from January 1996 until the wrongful discharge of July 22, 1996. Adjiri's scientific abilities were far from any critics that Emory University never questioned. The grounds of the discharge of July 22, 1996 never stated Adjiri's scientific inability to perform the job for which she was hired.

c) Despite her qualification for the position, an adverse employment decision was made against Adjiri as she was terminated from her employment in July 1996.

d) The decision made by Emory University in July 1996 raises an inference of discrimination based on Adjiri's membership in the protected class. *See Chambers v. TRM Copy Centers Corp.*, 43 F. 3d 29, 37 (2d Cir. 1994).

4. Retaliation Claim:

Adjiri also met all the conditions for her claim of retaliation.

a) Adjiri suffered from harassment in her work place in violation of Title VII and complained about it. When she complained about her boss and co-worker, Adjiri was engaged in a protected activity known to the employer Emory University (See 29 C.F.R Labor). Adjiri also engaged in a protected activity when she complained about her co-worker who was not following radiation safety rules. Adjiri's complaint about Zhao is

an activity protected also by Title II of the 1972 Energy Reorganization Act, and known to the employer Emory University.

b) The employer Emory University subjected Adjiri to an adverse decision. Neither the ERO nor the EEO at Emory ever took any corrective action to stop harassment Adjiri complained about. In her despair, Adjiri attempted to complain to the Business Manager of the Pathology Department at Emory, Mrs. Carol McMurtray. Adjiri took an appointment with Mrs. McMurtray for the 22 of July 1996 (App. Ex. 18). But Mrs. McMurtray had prepared the first Separation Notice and surprised Adjiri with the termination of her employment that day of July 22, 1996 (App. Ex. 19) and (29 C.F.R. Labor).

c) There was a very clear link between the protected activity Adjiri was engaged in and the adverse employment decision taken by Emory University against her, which terminated Adjiri's employment on July 22, 1996. *See Canitia v. Yellow Freight System, Inc.*, 903 F.2d 1064, 1066 (6th Cir. 1990).

The following conclusions are evident:

a) Respondent indeed violated Title VII and the allegation of failure to exhaust her race and national origin claims as well as failure to make *prima facie* showing of hostile work environment sexual harassment, sex discrimination, or retaliation are erroneous as a matter of fact. **b)** Because petitioner successfully made the *prima facie* showing of her case, the Appeal Court failed to list any argument when it denied her petition for panel rehearing. **c)** For the reasons set forth in the petition and the above arguments, respondent's claim of failure to establish pretext is groundless.

II. Respondent Erroneously Claims This Case Holds No Importance Beyond The Parties.

It is an error for respondent to think that this case has no implication on other cases of employment discrimination. Title VII was born since 1964 and almost four decades later, employers throughout the country are still practicing discrimination on a daily basis, at different levels and in different ways. Many such employers were forced by court orders to stop their discriminatory practices such as Texaco. But many other employers who have not received similar orders from the court are continuing to abuse their employees.

Taking into account the difference between class-action lawsuits and the individually filed cases, many individual claims are dismissed using summary judgement. Those employers, who benefited from summary judgement advantage, go back to their old discriminatory practices after having collected insurance money to recover their legal expenses, which encourages them to do it all over and again. And thus discrimination in workplaces never ends.

III. Petitioner's Questions Have Not Been Raised Before.

It is a custom but not an exclusivity[1] for the Supreme Court to be called upon to resolve conflicts between courts.

Adjiri's petition happened to raise new questions, which have not been addressed before. Therefore,

---

[1] The Supreme Court decided in the last presidential elections while there were no precedent similar cases and no prior conflicts between courts as, the case of the candidate then George W. Bush raised new questions.

in this situation, a prior conflict between courts cannot possibly exist.

The questions that petitioner brought to the attention of the Supreme Court can only be brought by the very victim who felt the pain of discrimination in the bottom of her soul. Adjiri's petition may be unprecedented because as an unlucky victim of employment discrimination, she was lucky enough to survive pain, anguish and much more, for six long years in a row, before her voice could reach the Supreme Court.

Respondent's claim of lack of conflict between courts is inapplicable and consequently without merit.

IV. Respondent's Claim That Certiorari Is Not Warranted To Review Evidence Is Without Merit.

The Supreme Court has the jurisdiction to act in this case and the Supreme Court will use the means in its power, which are judged by the Supreme Court necessary to serve its duty.

Petitioner's writ is not based on hope but on documented evidence that the District Court censured and the Appeal Court agreed on (Refer to App. D attached to the writ).

Respondent's claim that Certiorari is not warranted to review evidence is therefore without merit.

V. Respondent's Desperate Claim That It Did Not Actually Confess Under Oath Is Poor And Without Merit.

In October 1996, respondent confessed under oath being at fault in the discharge of petitioner because that was the unique and mere truth behind the action of July 22, 1996.

Respondent did not expect petitioner to survive and take her case to court. When in November 1996, peti-

tioner, acting *pro se,* filed her claim under Title VII, respondent had to act and used the local INS with the hope to deport petitioner. When this evil tactic has not yet worked as planned, respondent desperately attempted to translate the confession it made under oath, into a simple matter of "specifically declined to challenge her appeal of the preliminary determination".

Most importantly, neither the District Court nor the Appeal court ever questioned the confession of October 1996. And neither the District Court nor the Appeal court ever questioned the legality of the document filed by the Georgia Department of Labor in which it recorded the confession made in October 1996 (Pet. App. D). However, both courts once agreed on censuring such evidence, rather challenged petitioner accusing her of failure to make *prima facie* showing of her case when the District Court granted respondent's motion for summary judgement which was later supported by the Appeal Court.

Respondent's claim that it did not actually confess under oath is desperate, poor and therefore without merit.

Conclusion

For the reasons set forth in the petition and for the arguments stated in this reply brief, Adjiri respectfully requests that her Petition for a Writ of Certiorari be granted.

Respectfully submitted,

Dr. Adouda ADJIRI, *Pro Se*
1231 Clairmont Road # 40-D
Decatur, GA 30030
Phone: (404) 235 0647

July 24, 2001